

NOT DESIGNATED FOR PUBLICATION
ARKANSAS SUPREME COURT

No. CR 07-142

CASSANDRA JOHNSON
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered

April 12, 2007

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE APPELLANT'S
BRIEF [APPEAL FROM THE
CIRCUIT COURT OF MISSISSIPPI
COUNTY, CHICKASAWBA
DISTRICT, CR 2004-324, HON.
CINDY GRACE THYER, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

A jury found appellant Cassandra Johnson guilty of capital murder and aggravated robbery and sentenced her to life without parole on the murder charge and 240 months imprisonment on the robbery charge. This court affirmed the judgment. *Johnson v. State*, 366 Ark. 8, ___ S.W.3d ___ (2006). Appellant filed in the trial court a pro se petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied and dismissed as untimely. Appellant has lodged an appeal of that order in this court, and now brings this pro se motion for an extension of time in which to file appellant's brief.

We agree with the trial court's finding that the petition was untimely, even though an incorrect time period was indicated in the order, and we must therefore dismiss the appeal. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted

to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam).

Arkansas Rule of Criminal Procedure 37.2(c) requires that the petition for postconviction relief must be filed within sixty days of the date the mandate issued. The trial court incorrectly calculated the period for filing using the 90 day time period from entry of judgment that is applicable if no appeal is taken. Here, an appeal was pursued, but appellant's petition was filed outside either of the time frames. The judgment was entered June 29, 2005, and the mandate issued on April 11, 2006. Appellant's petition was filed on November 27, 2006. While the trial court determined that the petition was filed more than 90 days after entry of judgment, the petition was also filed 230 days after the mandate. The petition was, without question, well outside the required time.

The time limitations imposed in Ark. R. Crim. P. 37.2(c) are jurisdictional in nature. The circuit court may not grant relief on a petition for postconviction relief which is not timely filed. *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996) (per curiam). Although the trial court did not correctly calculate the time for filing the petition, it was correct to determine that it did not have jurisdiction to grant relief. As appellant cannot prevail, we must dismiss the appeal, and appellant's motion is therefore moot.

Appeal dismissed; motion moot.